

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESAL PRICE )  
LITIGATION )

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MDL NO. 1456  
Master File No. 01-12257-PBS

**THIS DOCUMENT RELATES TO**

Subcategory Case No. 06-11337

*United States of America ex rel. Ven-A-  
Care of the Florida Keys, Inc. v. Abbott  
Laboratories, Civil Action No. 06- 11337*

Hon. Patti B. Saris

*United States of America ex rel. Ven-A-  
Care of the Florida Keys, Inc. v. Dey  
L.P., et al., Civil Action No. 05- 11084*

*United States of America ex rel. Ven-A-  
Care of the Florida Keys, Inc. v.  
Boehringer Ingelheim Corp., et al., Civil  
Action No. 07- 10248*

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**CONSENT MOTION TO MODIFY BRIEFING SCHEDULE**

Ven-A-Care of the Florida Keys, Inc. ("Plaintiff", "Relator" or "Ven-A-Care") requests, with the agreement of the other Parties, that the Court modify the briefing schedule and extend by one week the deadline for sur-replies pertaining to the Defendants' motions to dismiss, to allow the Relator and the United States to file their Sur-replies on December 18, 2009, and in support states as follows:

Ven-A-Care is the Relator in the following cases: (1) *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Civil Action No. 06-11337* ("Abbott Case No. 06-11337"); (2) *United States of America ex rel.*

*Ven-A-Care of the Florida Keys, Inc. v. Dey L.P., et al.*, Civil Action No. 05- 11084 (the “Dey Case”); (3) *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp., et al.*, Civil Action No. 07- 10248 (the “Roxane Case”); and (4) *United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories*, Civil Action No. 07-11618 (“Abbott Case No. 07-11618”). For purposes of the instant Motion, Ven-A-Care will refer to Abbott Case No. 06-11337, the Dey Case and the Roxane Case collectively as the “Ven-A-Care intervened cases.”

Defendant Abbott Laboratories, Inc. (“Abbott”), Defendants Dey Inc., Dey L.P., and Dey L.P., Inc. (the “Dey Defendants”) and Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc. (the “Roxane Defendants”) have each filed motions to dismiss for lack of subject matter jurisdiction in the above referenced Ven-A-Care intervened cases, based upon the False Claims Act’s “public disclosure bar.”<sup>1</sup> Additionally, Abbott has filed a separate motion to dismiss for lack of subject matter jurisdiction in Abbott Case No. 07-11618.

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<sup>1</sup>*The Roxane Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction and The Roxane Defendants’ Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction*. [Master Docket 6196 & 6197; Subcategory Docket 253 & 254]; *Defendants Dey, Inc., Dey, L.P. and Dey L.P., Inc.’s Motion to Dismiss the Relator’s Complaints for Lack of Subject Matter Jurisdiction and Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc.’s Memorandum of Law in Support of their Motion to Dismiss the Relator’s Complaints for Lack of Subject Matter Jurisdiction*. [Master Docket 6209 & 6210; Subcategory Docket 265 & 267]; *Abbott Laboratories, Inc.’s Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act’s Public Disclosure Bar and Abbott Laboratories, Inc.’s Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the False Claims Act’s Public Disclosure Bar in Case No. 06-11337*. [Master Docket 6179 & 6183; Subcategory Docket 250 & 252]

The briefing schedule pertaining to the Defendants' motions to dismiss in the Ven-A-Care intervened cases, as modified by the court on October 14, 2009 [Master Docket 6587; Subcategory Docket 494], includes a deadline of December 11, 2009 for sur-replies. With consent of the other Parties, the Relator requests an additional week for the United States and the Relator to file their sur-replies in those cases due to scheduling and time conflicts during the next two weeks, including the need to prepare for the hearings on the Schering Final Settlement Conference and on the Abbott, Dey and Roxane Daubert motions, both scheduled for December 11, 2009 before this Court. Additionally, moving the deadline back one week would allow sur-replies in the Ven-A-Care intervened cases to be filed at the same time as the sur-reply in Abbott Case No. 07-11618, which is due on December 18, 2009.

WHEREFORE the Relator respectfully requests that the Court grant this motion and extend the time for filing sur-replies in the Ven-A-Care intervened cases to December 18, 2009.

Dated: December 2, 2009

Respectfully submitted,

For the Relator,  
Ven-A-Care of the Florida Keys, Inc.

/s/ Alison W. Simon  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 2nd day of December, 2009 caused an electronic copy of the above CONSENT MOTION TO MODIFY BRIEFING SCHEDULE to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Alison W. Simon  
Alison W. Simon